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ANALYSIS FOR STATE OF ARIZONA

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Statute:

ARIZ. REV. STAT. §§ 28-7701 to 28-7758

Summary:

Two pilot programs each allow up to two solicited and unsolicited proposals. Not appropriate to use as a model for PPP enabling legislation.

Key Elements of Arizona's PPP Enabling Legislation

Last Updated: September 2005

No.	Issue:	Short Answer:	Sample Provision:
1.	Does the relevant law allow solicited and unsolicited proposals for PPP projects?	Yes.	§28-7701(A) authorizes the AZ DOT to solicit proposals from private entities for the construction and lease of two transportation facilities. Private entities may also submit unsolicited applications pursuant to §28-7742(E).
2.	Does the relevant law permit local/state/federal funds to be combined with private sector funds on a PPP project?	No express provision.	
3.	Who has rate-setting authority to impose user fees and under what circumstances may they be changed or otherwise reviewed?		Under §28-7701(C)(5) and 7750(A)(1), the PPP agreement should permit the private entity to impose and collect tolls for the use of the transportation facility constructed by the private entity. See also §28-7748 on toll rates.
4.	Does the relevant law permit TIFIA loans to be used on PPP projects?	No express provision.	
5.	Is the number of PPP projects limited to only a few "pilot" or "demonstration" projects?	Yes.	Under §28-7701(D) and 7747 (K), two pilot programs each allow up to two solicited and unsolicited proposals.
6.	Are there restrictions concerning the geographic location of PPP projects?	No.	
7.	Are there restrictions concerning the particular mode of transportation eligible to be developed as a PPP project (e.g., truck, passenger auto, freight rail, passenger rail)?	Yes.	PPP statute applies to transportation facilities, but term undefined.

8.	Is there a legal requirement to remove tolls after the repayment of project debt?	No.	§28-7704(A)(1) permits the AZ DOT to continue to charge tolls for the use of the transportation facility after the lease to the private entity expires.
9.	Does the relevant law permit the conversion of existing or partially constructed highways into toll roads?	No express provision.	
10.	Is there a restriction that prevents the revenues from PPP projects from being diverted to the state's general fund or for other unrelated uses?	Yes.	§28-7753.
11.	Is prior legislative approval required when an individual PPP proposal is received?	No express provision.	
12.	Are there any similar requirements that subject the PPP proposal or the negotiated PPP agreement to a local veto?	Yes.	§28-7746, under certain circumstances only.
13.	Does the relevant law permit all kinds of procurements for PPP project delivery? These might include, for example, calls for projects, competitive RFQ and RFPs, qualifications review followed by an evaluation of proposer concepts, use of design build, procurements based on financial terms such as return on equity rather than on price, long-term asset leases for some period of up to 60 years or longer from the time operations commence?		§28-7701(C)(2) authorizes the lease of the transportation facility "for a period mutually agreeable to the department and the private entity."
14.	Are there explicit exemptions/ supplemental procurement authority from the application of the state's general procurement laws?	No express provision.	
15.	Does the relevant law authorize the public sector to grant long-term leases/franchises for the construction, operation and maintenance of toll facilities?	Yes.	§28-7701(C)(2) authorizes the lease of the transportation facility "for a period mutually agreeable to the department and the private entity."
16.	Does the public sector have the authority to issue toll revenue bonds or notes?	No express provision.	
17.	Does the public sector have the authority to form nonprofits and let them issue debt on behalf of a public agency?	No express provision.	
18.	Does the relevant public agency have the authority to hire its own technical and legal consultants?	No express provision.	
19.	Does the relevant law permit the public sector to make payments to unsuccessful bidders for work product contained in their proposals?	No express provision.	
20.	Can the agency charge application fees to offset its proposal review costs?	No express provision.	

21.	Does the relevant law allow adequate time for the preparation, submission and evaluation of competitive proposals? Note that the agency should have the authority to establish these deadlines on a case-by-case basis depending on the complexity and scope of the initial proposal or other factors that might promote competition (e.g., more review time during holiday periods).		§28-7742(F). After the AZ DOT receive an unsolicited proposal, it must give competing proposers 60 days to submit their applications.
22.	Is the public sector required to maintain comparable non-toll routes when it establishes new toll roads?	Yes.	According to §28-7702(B) and 7745(C), no transportation facility may be constructed or operated unless a "reasonable alternative route exists."
23.	Are there any non-compete clause prohibitions?		According to §28-7702(B) and 7745(C), no transportation facility may be constructed or operated unless a "reasonable alternative route exists."
24.	Is the authority to enter into PPPs restricted to the state DOT or state turnpike authority or may regional or local entities also do so?	No express provision.	
25.	Does the relevant law specify evaluation criteria for PPP proposals received under a given procurement approach?	No express provision.	
26.	Does the relevant law specify the structure and participants for the review process involving PPP proposals?	No express provision.	
27.	Does the relevant law protect the confidentiality of PPP proposals and any related negotiations in the period prior to execution of the PPP agreement?	No express provision.	
28.	Does the relevant law provide for the ability of the public sector to outsource long-term operations and maintenance and other asset management duties to the private sector?	Yes.	§28-7741, 7742(B)(6) and 7747(D)(1).

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